

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONTRAIL MONIQUE LATHAM,

Plaintiff,

v.

SUSAN BAUER, FORMER FIRM,
COWLITZ COUNTY PROSECUTORS
OFFICE,

Defendants.

CASE NO. C15-5241 RJB-JRC

ORDER TO FILE AMENDED
COMPLAINT

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR1, MJR3 and MJR4.

Currently before the Court is plaintiff's proposed complaint (*see* Dkt. 4). Under the Prison Litigation Reform Act of 1995, the Court is required to screen a prisoner's complaint seeking relief against a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). The Court may dismiss for failure to state a claim or if a defendant is immune from suit. *See* 28 U.S.C. 1915A(b).

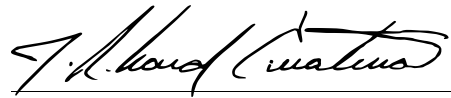
1 Plaintiff has not named a defendant against whom he can maintain a civil rights action.
2 Plaintiff names a Susan Bauer who is a Cowlitz County Assistant Prosecutor (*see* Dkt. 1-1).
3 Plaintiff also names, “Former Firm” and the Cowlitz County Prosecutor’s Office (*see* Dkt.1-1).
4 Plaintiff alleges that defendants violated his Eighth Amendment rights by imposing an excessive
5 sentence (*id.*).

6 42 U.S.C. § 1983 applies to actions of “persons” acting under color of state law. Neither
7 “Former Firm,” nor the Cowlitz County Prosecutor’s Office are “persons.” Municipalities,
8 however, are subject to suit under § 1983. *Monell v. New York City Dept. of Social Services*, 436
9 U.S. 658, 690 (1978). “In order to bring an appropriate action challenging the actions, policies
10 or customs of a local governmental unit, a plaintiff must name the county or city itself as a party
11 to the action, and not the particular municipal department or facility where the alleged violation
12 occurred.” *Bradford v. City of Seattle*, 557 F. Supp.2d 1189, 1207 (W.D. Wash. 2008) (holding
13 that the Seattle Police Department is not a legal entity capable of being sued under § 1983).
14 Thus, the proper defendant in this action would be Cowlitz County, not the Cowlitz County
15 Prosecutor’s Office.

16 Plaintiff also names an assistant prosecutor, Susan Bauer, as a defendant (Dkt. 1-1).
17 Prosecutors are entitled to absolute immunity from liability for damages under § 1983. *Imbler v.*
18 *Pachtman*, 424 U.S. 409, 427 (1976). If the prosecutor acts as an advocate ““in initiating a
19 prosecution and in presenting the State’s case,”” absolute immunity is warranted. *Ybarra v. Reno*
20 *Thunderbird Mobile Home Village*, 723 F.2d 675, 678 (9th Cir. 1984) (*quoting Imbler*, 424 U.S.
21 at 430-31). Prosecutorial immunity extends to the process of plea bargaining as an integral part
22 of the judicial process. *See Miller v. Barilla*, 549 F.2d 648, 649 n. 3 (9th Cir. 1977).
23 Accordingly, plaintiff cannot maintain his action against defendant Bauer.
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1 Rather than dismissing the action, plaintiff should be given the opportunity to cure the
2 defects in his filing if he believes he can state a cause of action. According, the Court orders
3 plaintiff to submit an amended complaint on or before May 29, 2015. The amended complaint
4 will act as a complete substitute for the original and not as a supplement. Plaintiff's failure to
5 comply with this order or failure to cure the defects in his original complaint will result in a
6 Report and Recommendation that this action be dismissed.

7 Dated this 20th day of April, 2015.

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10 J. Richard Creatura
11 United States Magistrate Judge
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